STATE OF MICHIGAN

COURT OF APPEALS

In re DAVARIO DEQUEZ STEVENSON, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVARIO DEQUEZ STEVENSON,

Defendant-Appellant.

UNPUBLISHED
February 14, 2008

No. 275845
Saginaw Circuit Court
LC No. 06-033393-DJ

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

After a bench trial, defendant, a juvenile (DOB 10-6-92), was convicted of carrying a concealed weapon, MCL 750.227. He was sentenced as an adult to three to five years in prison, but was then resentenced to 12 months in jail. Defendant appeals as of right. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his Fourth Amendment rights were violated when he was stopped and then searched for weapons. We disagree.

"When an officer approaches a person and seeks voluntary cooperation through noncoercive questioning, there is no restraint on that person's liberty, and the person is not seized." *People v Jenkins*, 472 Mich 26, 33; 691 NW2d 759 (2005). The Fourth Amendment was not implicated when police officers approached defendant. Defendant was in an area where there had been reports of recent gunfire, the officers had observed him and two others loitering on a street corner for 15 minutes, and defendant and the others had dispersed as the officers approached. These facts provided reasonable suspicion for an investigatory stop. *Illinois v Wardlow*, 528 US 119, 124-125; 120 S Ct 673; 145 L Ed 2d 570 (2000). "An officer who makes a valid investigatory stop may perform a limited pat down search for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer." *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996). Absolute certainty is not required; "the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The determination of reasonable suspicion

must be based on commonsense judgments and inferences about human behavior. See *United States v Cortez*, 449 US 411, 418; 101 S Ct 690; 66 L Ed 2d 621 (1981). Moreover, the officer must be relying on "specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry*, *supra* at 21. Here, defendant kept walking after he was asked to stop, and then doubled back and passed the officers. He did not respond when told to stop, kept his head down, avoided eye contact, appeared nervous, and did not answer when asked if he had anything on his person that the officer needed to be concerned about. Given the totality of the circumstances, we conclude that the officer was justified at this point in checking defendant for weapons as there was a reasonable suspicion that defendant might be armed. Accordingly, there was no error in denying the motion to suppress.

Defendant next argues that he did not knowingly and voluntarily waive his right to a jury trial. We agree, and reverse the trial court's denial of defendant's motion for a new trial.

In *People v Parrish*, 216 Mich App 178, 182; 549 NW2d 32 (1996), quoting *People v Hana*, 443 Mich 202, 220; 504 NW2d 166 (1993), this Court held that, "in cases where a juvenile is waived to an adult criminal court, the juvenile is still afforded a right to jury trial. . . ." MCR 6.402(B) provides that, before accepting a waiver, the court must advise the defendant in open court of the constitutional right to trial by jury and ascertain, by addressing the defendant personally, that the defendant understands the right and voluntarily chooses to surrender that right. In denying defendant's motion for a new trial, the trial court simply stated that defendant was properly advised of his right to a jury trial, apparently referring to statements made by a hearing referee at a designation arraignment. This determination was clearly erroneous. See *People v Williams*, 275 Mich App 194, 197; 737 NW2d 797 (2007). The first reference to a jury trial at the designation arraignment was as follows:

> And [defendant's counsel] has been equipped with a copy of a Petition for Designation of the juvenile. And [defendant] has the right to have an attorney, and does, has the right to have this tried by a judge or jury, has a right to remain silent, and also know that any statements made by him may be used against the juvenile, and the right to have a designation hearing within 14 days.

One could not discern from this statement whether the right to jury trial would attach at trial or at the designation hearing. The second reference was as follows:

> [I]f designated by the court for trial, that it would be tried in the same manner as for an adult. . . . And the juvenile would be afforded all the rights of an adult charged with the same crime. . . .

This statement in no way informed defendant that the rights of an adult included the right to a jury trial. The hearing referee then stated:

> And if the matter is sent to trial after the preliminary examination, the designation having been proved, then there would be a right to have a trial and that a trial can include trial–ah–of a jury of 12.

Having a right to a trial that "can include" a jury is not the same as having the right to a jury trial. Thus, the record does not establish that defendant, who had turned 14 years old 11 days before

the designation arraignment, understood that he had a right to a trial by jury or that he voluntarily chose to waive that right. Failure to follow the court rule therefore cannot be excused. Cf. *People v Mosly*, 259 Mich App 90, 96; 672 NW2d 897 (2003).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra